IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3988 OF 2004

Darshansingh Shingarsingh Rajput ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.S.V.Kotwal with Mr.S.S.Bhandary for Applicant.

Mr.A.S.Gadkari, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 28, 2004.

P.C.

1. Heard Counsel for the parties. The Applicant/accused No.2 has been arrested for offences punishable under Sections 21 and 29 read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act').

2. When a four-wheeler driven by accused No.1 was intercepted on 6th March 2004, 2.5 kg of Opium

was recovered from the said car. The said accused disclosed the source of procurement from accused No.2/Applicant herein. On the basis of that information, the Officers recorded the said information in writing and communicated to the superior Officer on 7th March 2004. Thereafter, on 8th March 2004, formal panchnama was recorded, mentioning the manner of recovery of 2.5 kg of Opium from accused No.1. Later on, raid was conducted on 8th March 2004 at the residence of the Applicant herein, in which, 227 gms Opium kept in 19 small packets were recovered. Out of the said 19 packets, only two packets have been sent for Chemical Analysis, consisting of 11 gms of Opium each, i.e. total 22 gms.

3. The first contention raised on behalf of the Applicant is that there is non-compliance of Section 44(2) of the Act, which has vitiated the trial. The grievance is that the concerned Officer failed to send communication to the Official Superior within the specified time. There is no substance in this submission. The record produced before me by the learned A.P.P. indicates that the

communication of the information received by the Police was reduced into writing on 7th March 2004 and immediately, communicated to the Official Superior- obviously within the specified time. There is no reason to doubt the correctness of that statement at this stage. Viewed in this perspective, there is no substance in the submission that there has been non-compliance of Section 44(2) of the Act.

4. The second argument canvassed before me is that it was obligatory on the part of the Investigating Officer to forward entire contraband for chemical analysis, whereas, in the present case, only two packets consisting of 11 gms of Opium each, have been forwarded. If it is so, it will have to be assumed that only 22 gms of Opium has been recovered from the Applicant herein, which is less than the small quantity, and if it is so, the Applicant ought to be released on bail. To buttress this submission, reliance was placed on the decision of the Apex Court reported in the **AIR 1993 SC 1456 in the case of Gaunter Edwin Kircher vs. State of Goa, Secretariat Panji, Goa**.

However, on considering the said decision in its proper perspective, it is evident that the proposition canvassed on behalf of the Applicant that the entire trial is vitiated, cannot be accepted. That is not the statement of law in the reported decision pressed into service. On the other hand, it is seen that the Apex Court observed that directions given by Court to the concerned Authorities to send the entire quantity seized for chemical analysis, so that, there may not be any dispute regarding the quantity seized. In other words, the defect, if any, is a curable one, of requiring the Authorities to send the entire quantity for chemical analysis. In the present case, the total quantity of Opium recovered from the residential house of the Applicant is 227 gms in 19 packets. The Trial Court, in the light of observations made by the Apex Court, can always direct the Authorities to send the entire quantity seized for chemical analysis. If it is so, the defect brought to my notice, cannot be the basis for grant of bail to the Applicant. Hence, even this contention does not find favour with me.

5. It is lastly contended that the law

requires that the morphine components should be in excess of 0.2%. Insofar as quantity of Opium recovered from the Applicant herein, there is nothing on record to suggest that the morphine contents were more than 0.2%. In response to this argument, learned A.P.P. points out that the Chemical Analyser's Report in relation to the Applicant herein/accused No.2 is still awaited. If it is so, the ground canvassed before this Court is premature and cannot be the basis for grant of bail.

6. Even though, I am disposed of to reject this Bail Application, it will be open to the Applicant to approach the Trial Court if the Chemical Analyser's Report in respect of the Opium recovered from the house of the Applicant herein discloses that the contents of morphine is less than 0.2%. That liberty is reserved to the Applicant.

7. Taking overall view of the matter, the Application deserves to be rejected. Hence, dismissed with the above observations.

A.M.KHANWILKAR, J.